

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : CHARGE NO: CR/100/14
DATE: : THURDAY 17TH JUNE, 2020

BETWEEN:

THE STATECOMPLAINANT/RESPONDENT

AND

1. ISAMAILA MUHAMMAD

2. HAMZA GARBA



DEFENDANTS/

APPLICANTS

RULING

The Accused/Applicants approached this Honourable Court and sought for the following:-

1. An Order of the Court admitting the Accused/Applicants to bail pending the trial.
2. And for such further Order or Orders this Honourable Court may deem fit to make in the circumstance of this case.

In support of the Motion is 10 paragraph affidavit for the 1st accused and 9 paragraph affidavit for the 2nd accused was deposed to by One Olaitan Ibuoye Isaac a legal practitioner in the law firm of L.J. Ahmed & Co. counsel to the Applicants.

It is the deposition of the Applicants that on the 23rd January, 2014, 1st accused was going out with the

2nd accused in company of One Abdullahi and Faruq (Surname unknown) around Emir's Palace Utako when a group of persons numbering up to 12 started calling them Armed Robbers.

That the said Abdullahi confronted the said persons and inquired why they were being referred to as Armed Robbers and without hesitation, the said group of person descended on the said Abdullahi, beaten him till he started bleeding before he ran away.

That after the said Abdullahi ran away, the group turned to the 1st Accused/Applicant and other, beating the 1st Accused/Applicant till he collapsed.

That the 1st Accused/Applicant only found himself conscious at the Police custody and knew not how he got there.

That he has been in detention since 23rd January, 2014 till date and never offered bail.

That he will not jump bail, if granted bail and that will not prejudice the Complainant/Respondent case.

On his part, the 2nd accused person corroborated the factor stated by the 1st Accused Applicant and added that immediately the 1st Accused/Applicant collapsed, he and others noticed One of the group removing a knife and started approaching them and the knife was used to stab him in his hand and in the stomach. The scar of the injury is still visible in both his hand and stomach till date.

That he ran straight to his mother who immediately took him to Mabuishi Hospital where his wounds were treated. He was later informed after leaving the

hospital that one person out of the group of persons that fought and stabbed him was dead.

That his mother advised him to submit himself to the police in order to clear his name which he complied.

Written address was filed along the Motion and the affidavit therein to which a sole issue was raised for determination to wit;

Whether the Applicants have placed sufficient material facts before this Court to warrant the exercise of Court's discretion in their favour in admitting them to bail pending their trial.

Learned counsel for the Applicants submit that Section 79 of the penal code law, laws of the Federation of Nigeria under which the Accused/Applicants were charged neither defined any offence nor prescribe any punishment for any

offence. Thus, the Accused persons are entitled to bail having been detained in the Respondent/Complainant's custody since 23rd January, 2014 which is now 7 years till date.

Learned counsel further submit that assuming but not conceding that the Accused/Applicants committed an offence known to law, the Respondent/Complainant has no power to detain them so long as the maximum period within which the law allowed a person who has been alleged to have committed an offence to be tried whether on bail or not is three (3) or two (2) months depending on the offence involved. Section 35 (4)(a) and (b) of the constitution of Federal Republic of Nigeria, 1999 (as amended) was cited.

Learned counsel therefore urge the court to immediately admit the Accused/Applicants to bail unconditionally in the interest of justice.

Upon service, the Complaint/Respondent filed a counter affidavit deposed to by One Loveme Odubo, a litigation clerk in the office of the Director of Public Prosecutions of the Federation (DPPF).

It is the deposition of the Complainant/Respondent that the Accused/Applicants, Ismaila Mohammed and Hamza Garba are facing trial on a two – count charge of abetment and culpable homicide punishable by death.

That the bail application before this Honourable Court was filed on the 28th April, 2015 long after the accused persons were arrested and could not meet the condition for bail in the police station.

That the 2nd Accused/Applicants evaded arrest when the crime was committed and is likely to jump bail because of the magnitude of the offence committed.

That the Accused/Applicants are likely to interfere with the witness if released on bail especially as they live in the same area with the Prosecution witnesses, the deceased relatives and eyewitnesses.

That the offence for which the Accused/Applicants are charged is a capital offence which attracts the severest punishment known to law.

That it is in the interest of justice to refuse this application in the interest of justice.

A written address was filed wherein a sole issue was raised for determination to wit:-

“Whether the Accused/Applicants are entitled to bail considering all the circumstances surrounding this case”.

Learned counsel submit that an accused person charged with a capital offence is not ordinarily entitled to bail except on special circumstances. Special circumstances admissible in law include evidence of ill health (medical report) and evidence which may suggest that the accused person did not commit the alleged offence. Thus, there is nothing in the affidavit that suggests that the Applicants have shown the existence of any special circumstance to warrant the exercise of the Court’s discretion in their favour. ***SHAFIU ATIKU VS. THE STATE (2002)4 NWLR Pt. 757 Page 269*** was cited.

Learned counsel further content that Section 35(a) and (b) of the Constitution of the Federal Republic of Nigeria (CFRN) relied upon by the Applicants cannot avail them in the case. Counsel submit that the said right is not absolute. That the same constitution provides for situations and circumstances in which there can be derogation from the rights. Section 35 (1)(c) of the Constitution of the Federal Republic of Nigeria ***ALHAJI MUJAHEED DOKUBO ASARI VS FEDERAL REPUBLIC OF NIGERIA (2007) ALL FWLR Pt. 375 Page 566 ration 9*** and also ***pages 586 – 587;*** and ***CHINEMELU VS C.O.P (1995) 4 NWLR Pt. 390 at 407*** were cited.

Learned counsel finally submit and urge the court to consider the nature of the charge, strength of the evidence, severity of punishment in the event of

conviction, and in the interest of justice to reject the bail application because it is frivolous and lacks merit.

Court:-

I have gone through the application under consideration which seeks the court's discretion in granting the Accused/Applicants bail pending the determination of the substantive case.

I must state here that by virtue of section 35(4) and 36(5) of the 1999 Constitution of Federal Republic of Nigeria as amended, an accused person is entitled to his unfettered liberty and is presumed innocent until proven guilty. The onus however is on the prosecution to prove that a Defendant charged before a court of law is not entitled to be granted Bail.

The presumption of innocence and the right to liberty as enshrined in section 36 (5) and 35 (4) respectively of the constitution can only be invoked where there is no prima facie evidence against the accused. It would be foolhardy to allow the accused on bail because the constitution could not have envisaged a situation where accused person of every shade could be allowed bail just at the mention of the magic words of presumption of innocence. ***ALAYA VS STATE (2007) 16 NWLR (Pt. 1061) 483 at 505 paragraph D – F.***

The main function of bail is to ensure the presence of the accused at the trial. So if there is any reason to believe that the accused is likely to jump bail, the bail will properly be refused by the court in exercise of its discretion in dealing with the application.

***SULEMAN VS COP (2008) 8 NWLR (Pt. 1089)
298.***

The offence Defendants are charged with is a capital offence. The provision of the law makes it clear that bail is not automatic. The court may release an Accused/Applicant on bail upon some conditions stipulated under the law and some that have received judicial pronouncements. Thus in considering whether to grant or refused bail to an accused person, the court is guided by the following factors:-

- i. Nature of the charge
- ii. The severity of the punishment in the event of conviction.
- iii. The strength of the evidence by which the charge is supported.

- iv. The criminal record of the accused, if any.
- v. The likelihood of the repetition of the offence.
- vi. The probability that the accused may not surrender himself for trial, thus not bringing himself to justice.
- vii. The risk that if released, the accused may interfere with witness or supposes the evidence likely to incriminate him and
- viii. The necessity to procure medical treatment of social report. ***OHIZE VS C O P (2014) LPELR 23012 (CA)***.

From the averment contained in paragraph of the affidavit of the Applicants before this court, it is obvious that the Accused persons are willing to face

their trial and will not jump bail if same is granted to them.

As stated in the preceeding part of this ruling, attendance of court to face trial remain the reason and only reason courts usually refuse Bail.

Once an accused person's presence in court can be secured, court usually would not be hesitant in granting bail.

Above underscores the fact that bail is contractual in nature between the court and the accused person.

The Prosecution who were served with the Defendants/Applicants motion has argued vehemently that the bail be refuse on the ground that the Accused Applicants will jump bail if granted.

It is instructive to state here that the Court has discretion to grant bail or not and it does not lie on the Prosecution to state that bail should be refused.

I decline the application for bail.. I however Order for accelerated hearing.

Justice Y. Halilu
Hon. Judge
17th June, 2021

APPEARANCE

Mimido A. – for the Defendant.

Prosecution not in Court.